

# Order

Entered: November 14, 2003

**Michigan Supreme Court  
Lansing, Michigan**

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

ADM File No. 2000-29

Proposed Amendment of Rules  
7.202, 7.204, 7.205, and 7.212  
of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendment of Rules 7.202, 7.204, 7.205, and 7.212 of the Michigan Court Rules, as recommended by the Court of Appeals. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered by the Court at a public hearing. The schedules and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Underlining indicates new text and strikeover indicates text being deleted:]

Rule 7.202 Definitions

For purposes of this subchapter:

(1) - (2) [Unchanged.]

(3) ~~“entry” means the placing of an order, judgment, or other document into the file and records of a lower court or the Court of Appeals by the clerk;~~

(4) - (7) [Renumbered (3)-(6) but otherwise unchanged.]

Rule 7.204 Filing Appeal of Right; Appearance

- (A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(1) - (2) [Unchanged.]

- (3) Where service of the judgment or order on the appellant was delayed beyond the time stated in MCR 2.602, the claim of appeal must be accompanied by an affidavit setting forth facts showing that the service was beyond the time stated in MCR 2.602. The appellee may file an opposing affidavit within 14 days after being served with the claim of appeal and affidavit. If the Court of Appeals finds that service of the judgment or order was delayed beyond the time stated in MCR 2.602 and the claim of appeal was filed within 14 days after service of the judgment or order, the claim of appeal will be deemed timely.

(B) - (G) [Unchanged.]

- (H) Docketing Statement. In all civil appeals, within 28 days after the claim of appeal is filed, the appellant must file two copies of a docketing statement with the clerk of the Court of Appeals and serve a copy on the opposing parties.

- (1) Contents. The docketing statement must contain the information required from time to time by the Court of Appeals through the office of the Chief Clerk on forms provided by the Clerk's office and must set forth:

(a) [Unchanged.]

- (b) the date of entry of the judgment or order sought to be reviewed as defined in MCR 7.204(A) or MCR 7.205(A), and whether the appeal was timely filed and is within the court's jurisdiction;

(c) - (e) [Unchanged.]

(2) - (4) [Unchanged.]

Rule 7.205 Application for Leave to Appeal

(A) Time Requirements: An application for leave to appeal must be filed within 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule. For purposes of this rule, “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(B) –(G) [Unchanged.]

Rule 7.212 Briefs

(A) - (B) [Unchanged.]

(C) Appellant’s Brief; Contents. The appellant’s brief must contain, in the following order:

(1) – (3) [Unchanged.]

(4) A statement of the basis of jurisdiction of the Court of Appeals.

(a) The statement concerning appellate jurisdiction must identify the statute, court rule, or court decision believed to confer jurisdiction on the Court of Appeals, and the following information:

(i) the date of signing entry of the judgment or order ~~sought to be reviewed~~, or the date of data entry of the judgment or order in the issuing tribunal’s register of actions, as applicable to confer jurisdiction on the Court of Appeals under MCR 7.204 or MCR 7.205.

(ii) – (iv) [Unchanged.]

(b) [Unchanged.]

(5) – (9) [Unchanged.]

(D) - (I) [Unchanged.]

Staff Comment from the Court of Appeals regarding the proposed amendments:  
Under the current rules, MCR 2.602 provides that, for trial court purposes, date of “entry”

means the date of signing, whereas MCR 7.202 provides that, for Court of Appeals purposes, date of entry is essentially the date the order or judgment is entered in the issuing tribunal's register of actions (placement in the file). The variance in these definitions is problematic for those who seek to timely file claims of appeal or applications for leave in the Court of Appeals. These individuals may be confronted with a signed order that is undated, or that bears multiple dates. Alternatively, they may be legitimately unaware of a signed order until it is later entered in the tribunal's register of actions. The amendments proposed here are intended to clarify the rules in such a manner as to leave MCR 2.602 intact while providing appellate parties with the means of timely appealing orders and judgments either as soon as they are signed or within the required period after data entry has been accomplished.

Necessarily, the latter option will require that the issuing tribunals' registers of action permanently memorialize the date on which data entry of each order and judgment has been accomplished. While this consequence may entail programming or policy changes for issuing tribunals, it is perceived as simpler and more cost effective than implementing a rule that all trial court orders and judgments must be entered on the docket on the date of signing. The programming change is a one-time expense; funding a court to hire sufficient staff to accomplish data entry for every court order or judgment on the date of signing would be a substantial and recurring expense.

The proposed amendment of MCR 7.202 deletes the definition of "entry" so that the definition in MCR 2.602 remains unaffected and "entry" at the appellate level is defined as necessary in the individual rules.

The proposed amendments of MCR 7.204 and MCR 7.205 are intended to allow the two different avenues of recognizing jurisdiction (date of signing or date of data entry) to apply both to civil and criminal appeals, and to apply to all types of recognized judgments/orders. MCR 7.204 is also amended to provide for the "untimely" filing of a claim of appeal upon submission of an affidavit setting forth facts showing that service was beyond the time stated in MCR 2.602. This provision is intended to resolve the situation that arises when the judgment or order is signed and docketed within the proper time, but service is delayed beyond the time stated in MCR 2.602. MCR 7.205 is not similarly amended in this latter regard because MCR 7.205(F)(1) already provides for the filing of a statement of facts explaining a delayed application.

The proposed amendment of MCR 7.212(C)(4)(a)(i) restates the requirements of the jurisdictional statement in conformity with the proposed amendments of MCR 7.204 and MCR 7.205.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by February 1, 2004, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). Please refer to ADM File No. 2000-29 when filing a comment. Your comments and the comments of others will be posted at [www.courts.michigan.gov/supremecourt/resources/administrative/index.htm](http://www.courts.michigan.gov/supremecourt/resources/administrative/index.htm).



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 14, 2003<sup>5</sup>

Corbin R. Davis

Clerk